



# NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **KEVIN SHELLEY**

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## **SECRETARY OF STATE KEVIN SHELLEY FILES BRIEF FOR *EN BANC* REVIEW BY THE NINTH CIRCUIT COURT OF APPEALS**

SACRAMENTO – Secretary of State Kevin Shelley today filed the attached brief with the Ninth Circuit Court of Appeals seeking a full review by an “en banc” panel of the full court.

The Secretary of State’s brief “requests that the Court grant rehearing of this matter en banc and issue a new decision upholding the District Court’s denial of the preliminary injunction requested by appellants.”

Key arguments contained in the brief filed today with the Court include:

- “...the panel decision in this case was an untenable departure from settled precedent, this case presents one of those ‘rare circumstances’ when en banc consideration is necessary to secure or maintain uniformity of decisions. Moreover, en banc consideration is appropriate given the exceptional importance of the question presented...”
- “...enjoining an election is an extraordinary remedy involving a far-reaching power, which is almost never exercised by federal courts prior to a determination on the merits.”
- “...the three-judge panel in this case made no mention of the fact that the October 7, 2003, election is already underway. Absentee balloting has been underway since September 8, 2003....More than 2 million absentee ballots have been mailed to California voters, and more than 395,000 California voters have already cast their ballots. Counties have mailed 15 million sample ballots to voters, and the Secretary of State has mailed 13 million state ballot pamphlets to California voters. Polling places have been established and poll workers have been hired. The state and local governments have already incurred approximately \$30 to \$50 million in costs in conducting the election.”
- “Federal case law uniformly states that federal courts should not intervene in an ongoing state election except in the most extraordinary of circumstances.”
- “The starting point for the state’s interest is the compelling public interest in objective, consistent application of the election schedule requirements. The irreparable harm to the state from the panel’s injunction includes not only the inability to fulfill its mandated duty to proceed with the ongoing election, but also the destruction of the state’s interest in neutral, general application of the election schedule requirements.”

A copy of the complete brief is available by calling the Secretary of State’s press office at 916/653-6575.